

## **2004 BCSECCOM 227**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief granted to a reporting issuer, with a current base shelf prospectus, from the requirement to prepare and include or incorporate by reference, in any future shelf prospectus supplement to this base shelf prospectus, December 31, 2003 proforma financial statements for a significant acquisition that took place in February 2003 and relief from the requirement to include or incorporate by reference in any future shelf prospectus supplement to this base shelf prospectus, annual comparative financial statements for the significant acquisition pertaining to the year ended subsequent to the acquisition date

### **Applicable British Columbia Provisions**

National Instrument 44-101 *Short Form Prospectus Distributions*

National Instrument 44-102 *Shelf Distributions*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR,  
NOVA SCOTIA AND PRINCE EDWARD ISLAND**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF CANADIAN OIL SANDS LIMITED**

### **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (the “Jurisdictions”) has received an application from Canadian Oil Sands Limited (the “Corporation”) and Canadian Oil Sands Trust (the “Trust”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) in connection with the Corporation's medium term note program established under a short form base shelf prospectus dated March 27, 2003 (the “Shelf Prospectus”) that the following requirements contained in National Instrument 44-101 *Short Form Prospectus Distributions* (“NI 44-101”) shall not apply to future shelf prospectus supplements to the Shelf Prospectus:

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- 1.1 the requirement to include or incorporate by reference *pro forma* financial statements for the year ended December 31, 2003 to give effect to the acquisitions by the Corporation of: (a) an additional 10% working interest in the Syncrude oil sands project near Fort McMurray, Alberta (the “Syncrude Project”) from EnCana Corporation (“EnCana”) on February 28, 2003 (the “February Acquisition”); and (b) its subsequent acquisition of an additional 3.75% interest in the Syncrude Project (together with a 6% gross overriding royalty on another 1.25% interest in the Syncrude Project held by a third party) from EnCana on July 10, 2003 (the “July Acquisition”, and together with the February Acquisition, the “Acquisitions”), as if the Acquisitions had taken place on January 1, 2003; and
- 1.2 the requirement to include or incorporate by reference financial statements of AEC Oil Sands, L.P. (the entity through which EnCana held its 13.75% interest in the Syncrude Project) subsequent to the year ended January 31, 2003,

(collectively, the “Updated Financial Statements”);

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) created pursuant to National Policy 12-201, the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 or in Québec Commission Notice 14-101;
4. AND WHEREAS the Corporation has represented to the Decision Makers that:
  - 4.1 The Trust is a reporting issuer or the equivalent in each of the Jurisdictions, and is not in default of any requirements under the Legislation.
  - 4.2 The Trust has two direct wholly-owned subsidiary entities, namely the Corporation and Canadian Oil Sands Commercial Trust (“CT”).
  - 4.3 The Trust holds an aggregate 35.49% working interest in the Syncrude Project indirectly through the Corporation (which has a direct 31.74% interest) and CT (which has an indirect 3.75% interest).

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- 4.4 The Trust has no material assets other than its interests in the Syncrude Project.
- 4.5 The business of the Corporation is to oversee the Trust's indirect 35.49% working interest in the Syncrude Project through its role as the manager of both the Trust and CT. The Corporation does not have any material operations that are independent of this role.
- 4.6 The Corporation became a reporting issuer or the equivalent in the Jurisdictions on March 27, 2003 upon the issuance of a receipt for the Shelf Prospectus under National Instrument 44-102 *Shelf Distributions* ("NI 44-102") relating to the sale of up to CAD \$750,000,000 of unsecured medium term notes (the "Notes").
- 4.7 The Corporation is not in default of any requirements under the Legislation.
- 4.8 Pursuant to a guarantee agreement (the "Guarantee") dated as of April 2, 2003 between the Trust and Computershare Trust Company of Canada, as trustee, any payments to be made by the Corporation as stipulated in the terms of the Notes or in an agreement governing the rights of the holders of Notes ("Noteholders") will be fully and unconditionally guaranteed by the Trust, such that the Noteholders shall be entitled to receive payment thereof from the Trust within 15 days of any failure by the Corporation to make a payment as stipulated.
- 4.9 The Corporation's qualification under NI 44-101 to file a prospectus in the form of a short form prospectus is based on the Guarantee, and the Trust has signed the certificate to the Shelf Prospectus.
- 4.10 The February Acquisition was a "significant acquisition" within the meaning of NI 44-101 at the 20% threshold (but not at the 40% threshold), and the Corporation included in the Shelf Prospectus *pro forma* consolidated financial statements to give effect to the February Acquisition as if it has occurred on January 1, 2002.
- 4.11 Pursuant to an MRRS Decision Document dated May 21, 2003, certain financial reporting requirements contained in the Legislation shall not apply to the Corporation so long as certain conditions are satisfied, including the filing by the Corporation of the annual comparative audited consolidated financial statements and the interim comparative consolidated financial statements of the Trust.

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- 4.12 The Corporation has filed the Trust's consolidated December 31, 2003 comparative financial statements, together with the accompanying report of the auditor (the "2003 Audited Financial Statements").
  - 4.13 Including the Updated Financial Statements in the Shelf Prospectus will impose unnecessary costs on the Corporation that will not result in any meaningful benefit to investors under the Shelf Prospectus beyond what is available from the 2003 Audited Financial Statements.
  - 4.14 The Acquisitions increased the Corporation's and the Trust's proportionate stake in the Syncrude Project. Updated *pro forma* statements based on an increased interest in the Syncrude Project would not offer any meaningful benefit to investors.
  - 4.15 The inclusion of 10 months of results with regard to the February Acquisition consolidated in the 2003 Audited Financial Statements is of equal or greater assistance to investors under the Shelf Prospectus than updated unaudited *pro forma* financial statements for the same period.
  - 4.16 The Corporation filed the comparative audited financial statements of AEC Oil Sands, L.P. for the year ended January 31, 2003 and incorporated them by reference in the Shelf Prospectus pricing supplements nos. 2 and 3 dated January 13, 2004.
  - 4.17 The audited financial statements of AEC Oil Sands, L.P. for the year ended January 31, 2003 were the last financial statements prepared for the acquired business, and the partners of AEC Oil Sands, L.P. dissolved the partnership effective February 28, 2003.
  - 4.18 If financial statements of AEC Oil Sands, L.P. for periods ended after January 31, 2003 were available, they would offer no meaningful benefit to investors.
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
  - 6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;
  - 7. THE DECISION of the Decision Makers pursuant to the Legislation is that any future shelf prospectus supplements to the Shelf Prospectus shall not be

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required to include or incorporate by reference the Updated Financial Statements.

DATED at Calgary, Alberta on this 8<sup>th</sup> day of April, 2004.

Agnes Lau, CA  
Deputy Director, Capital Markets